

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

SENATE BILL 1266

AN ACT

AMENDING TITLE 15, CHAPTER 10, ARTICLE 8, ARIZONA REVISED STATUTES, BY ADDING SECTION 15-1225; AMENDING SECTION 11-952.01, ARIZONA REVISED STATUTES; RELATING TO SCHOOL DISTRICTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 15, chapter 10, article 8, Arizona Revised Statutes,
3 is amended by adding section 15-1225, to read:

4 15-1225. Postemployment benefits; trust accounts; actuarial
5 report

6 A. IF THE GOVERNING BOARD OFFERS POSTEMPLOYMENT BENEFITS TO SCHOOL
7 DISTRICT EMPLOYEES OR TO SPOUSES AND DEPENDENTS OF SCHOOL DISTRICT EMPLOYEES,
8 OR BOTH, MONIES TO FUND THESE BENEFITS MAY BE DEPOSITED IN AN OTHER
9 POSTEMPLOYMENT BENEFITS FUND OR AN OTHER POSTEMPLOYMENT BENEFITS TRUST
10 ACCOUNT, OR BOTH. ADDITIONAL MONIES SHALL NOT BE LEGISLATIVELY APPROPRIATED
11 SPECIFICALLY TO PROVIDE ANY POSTEMPLOYMENT BENEFITS OFFERED BY A GOVERNING
12 BOARD.

13 B. AN OTHER POSTEMPLOYMENT BENEFITS FUND IS A CASH CONTROLLED FUND AS
14 PROVIDED IN SECTION 15-905, SUBSECTION N. THE MONIES IN THE OTHER
15 POSTEMPLOYMENT BENEFITS FUND ARE NOT SUBJECT TO REVERSION, EXCEPT THAT AT THE
16 END OF FIVE YEARS OF NO ACTIVITY IN THE FUND, ANY REMAINING MONIES SHALL
17 REVERT TO THE MAINTENANCE AND OPERATIONS FUND.

18 C. AN OTHER POSTEMPLOYMENT BENEFITS TRUST ACCOUNT ESTABLISHED PURSUANT
19 TO SUBSECTION A OF THIS SECTION SHALL MEET ALL OF THE FOLLOWING CONDITIONS:

20 1. CONTRIBUTIONS MADE BY THE SCHOOL DISTRICT INTO THE TRUST ACCOUNT
21 ARE IRREVOCABLE.

22 2. THE ASSETS OF THE TRUST ACCOUNT SHALL BE DEDICATED TO PROVIDING
23 BENEFITS TO SCHOOL DISTRICT RETIREES AND THEIR BENEFICIARIES IN ACCORDANCE
24 WITH THE TERMS OF THE POSTEMPLOYMENT BENEFITS PLAN.

25 3. TRUST ASSETS SHALL BE LEGALLY PROTECTED FROM CREDITORS OF THE
26 SCHOOL DISTRICT OR THE INVESTMENT MANAGER PURSUANT TO SUBSECTION F OF THIS
27 SECTION.

28 D. CURRENT OR PRIOR YEAR POSTEMPLOYMENT BENEFITS LIABILITIES MAY BE
29 PAID FROM ANY SCHOOL DISTRICT FUND FROM WHICH A SCHOOL DISTRICT MAY PAY
30 EMPLOYEE BENEFITS INTO THE OTHER POSTEMPLOYMENT BENEFITS FUND OR TRUST
31 ACCOUNT. PAYMENTS FOR CURRENT OR PRIOR YEAR LIABILITIES PAID INTO THE OTHER
32 POSTEMPLOYMENT BENEFITS FUND OR TRUST ACCOUNT SHALL BE TREATED AS AN
33 EXPENDITURE FROM THE ORIGINATING SCHOOL DISTRICT FUND.

34 E. THE FOLLOWING EXPENDITURES MAY BE MADE FROM AN OTHER POSTEMPLOYMENT
35 BENEFITS FUND OR AN OTHER POSTEMPLOYMENT BENEFITS TRUST ACCOUNT:

36 1. ADMINISTRATIVE AND MANAGEMENT COSTS.

37 2. PAYMENT OF BENEFITS.

38 F. AN INVESTMENT MANAGER FOR AN OTHER POSTEMPLOYMENT BENEFITS TRUST
39 ACCOUNT ESTABLISHED PURSUANT TO SUBSECTION A OF THIS SECTION SHALL BE EITHER:

40 1. A QUALIFIED INVESTMENT MANAGER APPOINTED BY THE DISTRICT GOVERNING
41 BOARD.

42 2. THE MANAGER OF A PUBLIC AGENCY POOL ESTABLISHED PURSUANT TO SECTION
43 11-952.01.

44 G. THE INVESTMENT MANAGER FOR AN OTHER POSTEMPLOYMENT BENEFITS TRUST
45 ACCOUNT MAY INVEST AND REINVEST THE MONIES IN THE ACCOUNT AND MAY HOLD,

1 PURCHASE, SELL, ASSIGN, TRANSFER AND DISPOSE OF ANY OF THE SECURITIES AND
2 INVESTMENTS IN WHICH ANY OF THE TRUST ACCOUNT MONIES ARE INVESTED. THE
3 INVESTMENT MANAGER SHALL INVEST THE MONIES IN THE TRUST ACCOUNT IN THE SAME
4 MANNER AS THE MONIES IN THE PERMANENT STATE LAND FUND PURSUANT TO SECTION
5 35-314.01, EXCEPT THAT NOT MORE THAN THIRTY PER CENT OF THE MONIES IN THE
6 TRUST ACCOUNT MAY BE INVESTED IN EQUITY SECURITIES AT ANY TIME. THE
7 PERCENTAGE OF INVESTMENT SHALL BE CALCULATED AT COST.

8 H. EACH SCHOOL DISTRICT SHALL ANNUALLY SUBMIT ON OR BEFORE SEPTEMBER 1
9 TO THE JOINT LEGISLATIVE BUDGET COMMITTEE AN ACTUARIAL STUDY OF EXISTING AND
10 PROSPECTIVE OTHER POSTEMPLOYMENT BENEFITS OFFERED BY THE SCHOOL DISTRICT,
11 INCLUDING AN ANALYSIS OF DEFINED CONTRIBUTION PLANS AND DEFINED BENEFITS
12 PLANS.

13 I. FOR THE PURPOSES OF THIS SECTION, POSTEMPLOYMENT BENEFITS DO NOT
14 INCLUDE BENEFITS PROVIDED BY THE ARIZONA STATE RETIREMENT SYSTEM.

15 Sec. 2. Section 11-952.01, Arizona Revised Statutes, is amended to
16 read:

17 11-952.01. Public agency pooling of property, fidelity,
18 liability, workers' compensation, life, health,
19 accident and disability coverage; exemptions;
20 board of trustees; contract; termination; audit;
21 insolvency; definition

22 A. In addition to other authority granted pursuant to this title, two
23 or more public agencies may enter into contracts or agreements pursuant to
24 this article for the joint purchasing of insurance, including prepaid legal
25 insurance or reinsurance, or to pool retention of their risks for property,
26 fidelity and liability losses and to provide for the payment of such property
27 loss, fidelity loss, prepaid legal insurance or claim of liability made
28 against any member of the pool, including any elected or appointed official,
29 officer or employee covered by the pool, on a cooperative or contract basis
30 with one another or may jointly form a nonprofit corporation or enter into a
31 trust agreement to carry out the provisions of this section in their behalf
32 directly or by contract with a private party.

33 B. In addition to other authority granted pursuant to this title, two
34 or more public agencies may enter into contracts or agreements pursuant to
35 this article to establish a workers' compensation pool to provide for the
36 payment of workers' compensation claims pursuant to title 23, chapter 6 on a
37 cooperative or contract basis with one another or may jointly form a
38 nonprofit corporation or enter into a trust agreement to carry out the
39 provisions of this section in their behalf directly or by contract with a
40 private party. A workers' compensation pool established pursuant to this
41 subsection may provide coverage for workers' compensation, employers'
42 liability and occupational disease claims. A workers' compensation pool is
43 subject to approval as a self-insurer by the industrial commission pursuant
44 to section 23-961, subsection A, paragraph 2 and is subject to title 23,
45 chapter 6 and rules adopted pursuant to that chapter in addition to the

1 requirements of this section. The industrial commission, by rule, resolution
2 or order, may adopt requirements for the administration of a workers'
3 compensation pool under this subsection, including separation or commingling
4 of funds, accounting, auditing, reporting, actuarial standards and
5 procedures.

6 C. In addition to other authority granted pursuant to this title, two
7 or more public agencies may enter into contracts or agreements for the joint
8 purchase of life insurance, disability insurance, accident insurance or
9 health benefits plan insurance or may pool retention of their risks of loss
10 for life, disability, health or accident claims made against any public
11 agency member of the pool or to jointly provide the health and medical
12 services authorized in section 36-2907. Public agencies may establish pools
13 for the purposes of this subsection by any of the following methods:

- 14 1. On a cooperative or contract basis.
- 15 2. By the formation of a nonprofit corporation.
- 16 3. By contracts or intergovernmental agreements with the Arizona
17 health care cost containment system administration.
- 18 4. By the execution of a trust agreement directly by the agencies or
19 by contracting with a third party.

20 D. In addition to other authority granted pursuant to this title, two
21 or more public agencies may enter into contracts or agreements pursuant to
22 this article for the joint purchasing of insurance for property, liability or
23 workers' compensation losses or to pool retention of their risks for property
24 and liability loss to cover the public agency, its elected officials and
25 employees and the contractor and subcontractor of every tier engaged in the
26 performance of a construction project for the public agency. Public agencies
27 may establish pools for the purpose of this subsection by any of the
28 following methods:

- 29 1. On a cooperative or contract basis.
- 30 2. By the formation of a nonprofit corporation.
- 31 3. By the execution of a trust agreement directly by the agencies or
32 by contracting with a third party.

33 E. Section 10-11301 does not apply to nonprofit corporations formed
34 pursuant to this section.

35 F. Title 41, chapter 23 does not apply to the procurement of insurance
36 or reinsurance, or to the procurement of the services provided for in
37 subsection K, paragraph 8 of this section, by any pool established pursuant
38 to this section.

39 G. Title 43 does not apply to any pool established pursuant to this
40 section. Any pool established pursuant to this section is exempt from
41 taxation under title 43.

42 H. Each pool shall be operated by a board of trustees consisting of at
43 least three persons who are elected officials or employees of public entities
44 within this state. The board of trustees shall notify the director of the
45 department of insurance of the existence of the pool and shall file with the

1 director and with the attorney general a copy of the intergovernmental
2 agreement or contract. The attorney general shall file a copy of the
3 agreement or contract with the secretary of state as required by section
4 11-952. The board of trustees of each group shall do all of the following:

5 1. Establish terms and conditions of coverage within the pool
6 including exclusions of coverage.

7 2. Ensure that all claims are paid promptly.

8 3. Take all necessary precautions to safeguard the assets of the
9 group.

10 4. Maintain minutes of its meetings.

11 5. Designate an administrator to carry out the policies established by
12 the board of trustees and to provide day-to-day management of the group and
13 delineate in the written minutes of its meetings the areas of authority it
14 delegates to the administrator.

15 6. If the pool is a workers' compensation pool, file a copy of the
16 agreement with the director of the industrial commission.

17 I. If the pool includes private, nonprofit educational institutions,
18 each private, nonprofit educational institution shall post a bond, cash
19 deposit or other comparable financial security in an amount that is equal to
20 at least one and one-half times the amount of the private, nonprofit
21 educational institution's annual premium to ensure payment of the school's or
22 institution's legal liabilities and other obligations if the pool is
23 determined to be insolvent or is otherwise found to be unable to discharge
24 the pool's legal liabilities and other obligations pursuant to subsection N
25 of this section.

26 J. The board of trustees shall not:

27 1. Extend credit to individual members for payment of a premium,
28 except pursuant to payment plans established by the board.

29 2. Borrow any monies from the group or in the name of the group except
30 in the ordinary course of business.

31 K. In addition to the requirements of section 11-952, a contract or
32 agreement made pursuant to this section shall contain the following:

33 1. A provision for a system or program of loss control.

34 2. A provision for termination of membership including either:

35 (a) Cancellation of individual members of the pool by the pool.

36 (b) Election by an individual member of the pool to terminate its
37 participation.

38 3. A provision requiring the pool to pay all claims for which each
39 member incurs liability during each member's period of membership.

40 4. A provision stating that each member is not relieved of its
41 liability incurred during the member's period of membership except through
42 the payment of losses by the pool or by the member.

43 5. A provision for the maintenance of claim reserves equal to known
44 incurred losses and an estimate of incurred but not reported claims.

1 6. A provision for a final accounting and settlement of the
2 obligations of or refunds to a terminating member to occur when all incurred
3 claims are concluded, settled or paid.

4 7. A provision that the pool may establish offices where necessary in
5 this state and employ necessary staff to carry out the purposes of the pool.

6 8. A provision that the pool may retain legal counsel, actuaries,
7 auditors, engineers, private consultants and advisors.

8 9. A provision that the pool may make and alter bylaws and rules
9 pertaining to the exercise of its purpose and powers.

10 10. A provision that the pool may purchase, lease or rent real and
11 personal property it deems necessary.

12 11. A provision that the pool may enter into financial services
13 agreements with banks and other financial institutions, that it may issue
14 checks in its own name and that it may invest its monies in equity
15 securities, mutual funds and investment funds registered with the United
16 States securities and exchange commission, debt obligations and any eligible
17 investment permitted by section 35-323.

18 L. A pool or a terminating member shall provide at least ninety days'
19 written notice of the termination or cancellation. A workers' compensation
20 pool shall notify the industrial commission of the termination or
21 cancellation of a member thirty days before the termination or cancellation
22 of the member.

23 M. The pool shall be audited annually at the expense of the pool by a
24 certified public accountant, with a copy of the report submitted to the
25 governing body or chief executive officer of each member of the pool and to
26 the director of the department of insurance. The board of trustees of the
27 pool shall obtain an appropriate actuarial evaluation of the claim reserves
28 of the pool including an estimate of the incurred but not reported
29 claims. The department of insurance shall examine each public agency pool
30 once every five years. The director of the department of insurance may
31 examine a public agency pool sooner than five years from the preceding
32 examination if the director has reason to believe that the pool is
33 insolvent. The costs of any examination shall be paid by the pool subject to
34 the examination.

35 N. If, as a result of the annual audit or an examination by the
36 director of the department of insurance, it appears that the assets of the
37 pool are insufficient to enable the pool to discharge its legal liabilities
38 and other obligations, the director of the department of insurance shall
39 notify the administrator and the board of trustees of the pool of the
40 deficiency and the director's list of recommendations to abate the
41 deficiency, including a recommendation not to add any new members until the
42 deficiency is abated. If the pool fails to comply with the recommendations
43 within sixty days after the date of the notice, the director shall notify the
44 chief executive officer or the governing bodies, if any, of the members of
45 the pool, the governor, the president of the senate and the speaker of the

1 house of representatives that the pool has failed to comply with the
2 recommendations of the director.

3 O. If a pool is determined to be insolvent or is otherwise found to be
4 unable to discharge its legal liabilities and other obligations, each
5 agreement or contract shall provide that the members of the pool shall be
6 assessed on a pro rata basis as calculated by the amount of each member's
7 annual contribution in order to satisfy the amount of deficiency. The
8 assessment shall not exceed the amount of each member's annual contribution
9 to the pool.

10 P. A pool established pursuant to this section may make available
11 programs providing for insurance coverages described in subsections A, B and
12 C of this section to those charter schools governed by section 15-183,
13 subsection M and, except for a workers' compensation pool, to private,
14 nonprofit educational institutions.

15 Q. In addition to the authority set forth in this title, a pool
16 established pursuant to this section may invest public monies on behalf of
17 pool members, but any such investments shall be limited to those permitted by
18 section 35-323, **EXCEPT AS PROVIDED IN SECTION 15-1225, SUBSECTION G.** A pool
19 established pursuant to this section may not invest monies that are required
20 by law to be deposited with a county treasurer.

21 R. A pool established pursuant to this section, by the adoption of a
22 resolution of continuing effect, may authorize and request the state
23 treasurer to invest funds for the pool pursuant to section 35-326.

24 S. For the purposes of this section, "health benefits plan" means a
25 hospital or medical service corporation policy or certificate, a health care
26 services corporation contract, a multiple employer welfare arrangement or any
27 other arrangement under which health and medical benefits and services are
28 provided to two or more persons.